IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

NO. 78-468

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE,
Petitioner,

V.

UNITED STATES NUCLEAR REGULATORY COMMISSION,

AND

UNITED STATES OF AMERICA,
Respondents.

SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS,
Intervenor/Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

INTERVENOR/RESPONDENT'S BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

This is a Brief opposing a Petition for Certiorari requested by Public Service Company of New Hampshire (PSCO), seeking review of its Seabrook Nuclear Power Station construction permit, as upheld by the First Circuit. The portion of the permit in issue is a condition that PSCO route one mile out of 86 of its associated transmission lines around a designated natural area in Kingston, New Hampshire, known as the Pow Wow River/Cedar Swamp Natural Area (Natural Area). This condition, ordered by the Atomic Safety and Licensing Board (Licensing Board) has been affirmed by the Atomic Safety and Licensing Appeal Board (Appeal Board), the Nuclear Regulatory Commission (Commission), by declining to review, and the Court of Appeals.

Intervenor, Society for the Protection of New Hampshire Forests (Forests), the state's largest conservation organization, owns and protects approximately 120 acres or 10% to 15% of the Natural Area. This land was deeded to the Forests on the condition that the area be maintained in a natural state. Consequently, Forests has an active management program aimed at preserving the area while encouraging its educational and scientific use.

The heart of this controversy is the Natural Area itself — a relatively pristine, uncommon river-marsh ecosystem, where stands of rare Atlantic White Cedar, a bog pond, river and marshlands combine to provide an ideal habitat for migratory waterfowl. According to Forests' testimony, the area is of regional importance:

> That this ecological complex has been designated the Pow Wow River Marsh and Cedar Swamp Natural Area means that it is of regional significance and of importance not only to local residents, abutting landowners or "environmentalists", but to all people in the New England region. The approximately 1000 acres represents a unique grouping of significant natural features including the highly productive Pow Wow River and marshlands, the several stands of the rare Atlantic White Cedar in the Cedar Swamp Pond, a bog pond surrounded by the rare cedar and floating vegetation. It is curious to note that this area has remained unspoiled despite the tremendous pressure of development around it. To the east and west are rapidly growing mobile home parks, and around the pond to the north and south, seasonal year-round homes are being built. If this critical area remains a preserve, it is of such significance to the state that it is only one of twelve areas used by them for pre-season waterfowl studies. Forests Exhibit 2, p. 3.

On January 29, 1974, PSCO received site and facility approval for the nuclear plant and its associated transmission lines from the New Hampshire Public Utilities Commission (NHPUC). This approval, however, was specifically conditioned upon subsequent Federal licensing approval and, as to the transmission lines, anticipated subsequent agreements with concerned local entities. It was, in short, a somewhat tentative and broad corridor approval only.

PSCO itself did not realize, when it proposed the corridor, that it crossed a designated Natural Area. However, counsel for PSCO admitted a need existed for protection of the area. In fact, the utility proposed the use of two 200 foot high lattice steel towers bridging the area at one of its widest points on

the theory that these towers would be less intrusive in the Natural Area than the usual 140 foot wide cleared corridor with 75 foot wooden H-frame towers at short intervals.

When PSCO received its Certificate of Site and Facility for Seabrook Station on January 29, 1974 conditioned on Federal approval, its application for such authorization was pending before the Commission. The transmission line issue was placed in contention by Forests, without opposition, at a prehearing conference before the Licensing Board on May 24, 1974.

There was broad public support for Forests' position on the protection of the Natural Area. Forests President Bofinger testified:

> In the much broader context of a public meeting held July 26, 1974, Kingston residents firmly stated their desire to see the proposed transmission facility steer well clear of the Pow Wow River Valley. And, on August 22, 1974, the Kingston Conservation Commission confirmed this public sentiment by stating a unanimous opposition to any proposed routing of the transmission facility through the Cedar Swamp Area. Forests Exhibit 1, p. 3.

The Commission's final Environmental Impact Statement (EIS) further indicated the extent of support for Forests' position: fully two-thirds of the comments received supported avoidance of the Natural Area, and only PSCO's comment urged otherwise.

Trial-type hearings before the Licensing Board lasted for approximately one month. The transcript contains nearly 2,000 pages. The decision of the Licensing Board and the affirmance of the Appeal Board closely approximated an alternate routing laid out by PSCO itself. Each decision reveals

conscientious consideration both of the increased cost to PSCO of the routing and the Board's responsibility to choose an alternative of minimal environmental impact.

The condition closely approximates the Petitioner's own routing (about one mile of 86 miles were changed). It is concededly supported by substantial evidence*, and in fact follows a recommendation of the Commission's own staff, the so-called "Staff minimum circumference dogleg". This dogleg was less extensive than other alternatives sought by Forests and originally supported by the Commission Staff. In fact, PSCO's estimated cost of going around the Natural Area (which the Commission's Staff considered to be inflated) is $493,000.00. Using PSCO's estimate, this amount is 0.02% of the Seabrook station's total estimated cost of $2.35 billion. In fact, one of PSCO's own engineers described the routing adjustment as a "minor jog". TR. 8345, Testimony of PSCO Witness Barbour, on cross-examination.

I. On The Facts Of This Case There Is No Conflict Between Federal And State Authorities Which Warrants Supreme Court Review.

As Petitioner points out, PSCO needed to obtain several agency approvals for Seabrook station. Contrary to Petitioners claims, however, none of these approvals constituted a final decision on transmission line routing or design. In fact, the Commission's action responds to and supplements the State's order. The order issued by the NHPUC was conditional — it invited modification. The State's approval for an overhead wire crossing of public waters stated: "These licenses are granted subject to the furnishing of plan and profile drawings showing tower and wire locations, construction design and minimum vertical water clearance satisfactory to

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*See, fn. 1, infra., p. 6.

the Commission [NHPUC]". (Pet. App., p. 65; emphasis supplied). The Certificate of Site and Facility also states:

> While the associated transmission lines will be authorized along the route set forth in Exhibit #53A, we fully realize the possibility of refinement of these locations as field work progresses with the actual layout of these routes. This approval may be modified, upon request, by the petitioner [PSCO] should meaningful negotiation with responsible local authorities, regional commissions, etc. result in any beneficial route relocations. (Pet. App., p. 63.)

The interest of local groups (such as the Kingston Conservation Commission and others) convinced the NHPUC that PSCO could finalize its transmission line routings only after receiving input into matters such as wire crossings over the Cedar Swamp. The Certificate of Site and Facility responded to the preliminary nature of PSCO's transmission line plans and the need for further input by including an invitation for modification.

Finally, the NHPUC noted that "[e]ven though the plant cannot become a reality without AEC approval, we will nevertheless condition our certificate of site and facility upon obtainment of federal approval". (Pet. App., p. 72; emphasis supplied). Consequently, its Certificate of Site and Facility provides that it is:

> Further ordered, that the authority granted herein be, and hereby is, conditional upon the applicant obtaining the necessary construction and operating permits and/or licenses from the United States Atomic Energy Commission. (Pet. App., p. 74.)

In short, the order is a broad corridor approval subject to beneficial[1] refinements arising from meaningful negotiations with other governmental entities[2]. Even so, PSCO has not exercised its option to request the beneficial modification of a "minor jog" around the Cedar Swamp[3]. Absence of the NHPUC from this litigation indicates that a conflict between State and local authorities does not exist. Supreme Court review is not warranted to re-examine this minor jog which was exhaustively examined by two agency boards and the Court of Appeals[4].

II. PETITIONER FAILS TO ALLEGE A VALID CONTROVERSY OR CONFLICT IN LAW IN THE PRESENT CASE, THEREFORE SUPREME COURT REVIEW SHOULD BE DENIED.

A. THE COMMISSION HAS AUTHORITY UNDER ITS ORGANIC STATUTE TO INCLUDE CONDITIONS IN A CONSTRUCTION PERMIT WITH RESPECT TO TRANSMISSION LINES.

1. The Commission Properly Exercised Its Jurisdiction Under the Atomic Energy Act of 1954.

The Atomic Energy Act of 1954, as amended, (AEA), empowers the Commission to grant licenses for the construction

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[1]Petitioner has never claimed that the NRC approved routing was not superior to its own. Petitioner has raised a purely legal issue without questioning the evidence supporting NRC's decision.

[2]This conditional approval surely intended PSCO to come back to the Commission after finalizing the routing. This avoids the Commission wasting its time resolving conflicts easily settled by the Petitioner.

[3]In fact, in light of the relatively minor costs involved to PSCO — a public utility which has its opportunity to make a profit on its investment — one must wonder if Petitioner is not playing the types of "games" which this Court disdains in Vermont Yankee Power Corp. v. NRDC, 435 U.S. 519, 553 (1978). Petitioner did not raise the jurisdictional question for more than a year after Forests placed the transmission lines in issue, after Intervenor had expended many man hours in preparation for the evidentiary hearing. Petitioner could easily have obviated this entire controversy by making the request to modify which NHPUC invites.

[4]Indeed, PSCO itself sought NRC approval for a transmission line alternative in another area (Packer Bog), conceding through its attorney, that NHPUC approval "would be relatively easy to obtain". TR. 8108, statement of PSCO Attorney Dignan.

and operation of any "production or utilization facility", 42 U.S.C. §2132, and to grant the license with "such conditions as the Commission may be rule or regulation establish to effectuate the purposes and provisions of this chapter"[5]. 42 U.S.C. §2133(a). In defining the Commission's jurisdiction, Congress granted the Commission wide latitude to use its technical expertise in a rapidly advancing and potentially dangerous technological area. Accordingly, "utilization facility" includes ". . . any component part especially designed for such equipment or device as determined by the Commission". 42 U.S.C. §2014(cc) (emphasis supplied.) Transmission lines are component parts of a utilization facility which serve the purpose of radiological safety, and the Commission has so determined.

The Commission has promulgated regulations which govern transmission lines for such purpose. 10 C.F.R. §50, App. A, Criterion 17 (1978). These regulations were promulgated prior to NEPA. Their purpose is to insure that power can be transmitted to the nuclear facility in the event of an emergency. The transmission lines at issue in this case serve this purpose: these lines not only transmit electricity generated by the plant, but in cases of emergency, will transmit power to the facility to help quench a meltdown. As such, these lines are an indispensable component part of the utilization facility.

Under the AEA then, the NRC was granted jurisdiction to grant permits for the construction of nuclear power facilities, to stipulate transmission lines as a component part of such facilities, and to impose conditions on transmission lines in construction permits.

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[5]U.S.C. §2235 states that construction permits are licenses for purposes of this Act.

2. Section 271 Of The Atomic Energy Act Does Not Serve As A Limitation On The Commission's Authority.

The First Circuit opinion in this case comports with Congressional intent, other Circuit decisions, and does not render any changes in Federal-State relations. The Ninth Circuit Court of Appeals decision in Maun v. U.S., 347 F.2d 970 (9th Cir., 1965)[6] was swiftly overruled by legislative enactment. The amendment of §271, in response to improper judicial interpretation, made it clear that NRC authority over such activities is controlling. Section 271 was amended by the additional of the underscored language:

> Sec. 271. Agency Jurisdiction - Nothing in this Act shall be construed to affect the authority or regulations of any federal, state, or local agency with respect to the generation, sale, or transmission of electric power produced through the use of nuclear facilities licensed by the Commission: Provided, that this section shall not be deemed to confer upon any Federal, State, or local agency any authority to regulate, control, or restrict any activities of the Commission. 42 U.S.C. §2108 (emphasis supplied.)

Petitioner's argument that Congressional intent was to preclude other agency interference only in Commissioned-owned or operated facilities is erroneous. The plain meaning of the statute denies state authority over any Commission activity. This includes licensing. The legislative history also contradicts Petitioner's contention. The House Report makes it clear that §271 was not supposed to subject the AEC to any control from other Federal, State, or local agency:

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[6]Petitioner mistakenly relies on Maun v. U.S. as a conflicting circuit opinion to obtain this Court's attention. (Pet. Brief, p. 14.)

As amended, section 271 would reaffirm a conclusion already implicit in the Atomic Energy Act of 1954, as amended . . . [P]ersons licensed by the AEC and producing power through the use of such facilities are subject to AEC's control with respect to the special hazards associated with nuclear facilities and otherwise to any and all applicable Federal, State, and local regulations with respect to the generation, sales, or transmission of electric power. Section 271, as amended by this bill, does not in any way subject the AEC to the authority of any state or local subdivision thereof. It in no way serves as a limitation on the powers that AEC otherwise possesses under the Atomic Energy Act of 1954, as amended, and the supremacy clause of Article VI of the Constitution. The amendment of this section effected by this bill is intended as a clarification of the meaning of section 271 as originally enacted. Accordingly, it does not represent a change in this law applicable only to future judicial proceedings currently in existence. The provision to section 271, as amended, reaffirms that nothing in that section confers any authority on any Federal, State, or local agency to regulate, control or restrict activities of the AEC. H.R. Report No. 567, 89th Cong., 1st Sess. Reprinted in 1965 U.S. Code Cong. & Adm. News 2775, 2784.

The real meaning of §271 is that once the Commission exercises its authority, all Federal, State and local authority must give way. This authority does not, however, relieve the licensee from complying with other non-conflicting provisions of applicable Federal, State, and local law. Once the plant is on line, and electricity is produced, then the general sale and transmission of electricity is subject to other agency control.

Any other reading would hinder the Commission's fulfillment of its mandate — the protection of the public from radiological hazards.

The First Circuit Court of Appeals in an earlier case explained the amendment to §271 is a manner consistent with Forests' position. The Court explained, ". . . Congress amended 42 U.S.C. §2108 to make clear that no federal, state, or local agency had any power of control over the activities of the Commission". New Hampshire v. AEC, 406 F.2d 170, 175 (1st Cir., 1969), cert. den. 395 U.S. 962.

The Court of Appeals decision in the instant case not only comports with Congressional intent and perpetuates the intended Federal-State relationship, but also allows the Commission to effectively proceed with its mandate.

B. THE COMMISSION'S AUTHORITY TO CONDITION PERMITS WITH RESPECT TO TRANSMISSION LINES IS BROADENED BY NEPA TO INCLUDE ENVIRONMENTAL IMPACTS.

When Forests first voiced widely held opposition to PSCO's routing of a transmission line through the river bottom and cedar stands of the Natural Area, no party challenged the Commission's authority under the National Environmental Policy Act of 1969[7] to consider the impact of the proposed route and to mitigate that impact by examining possible alternative routes. Petitioner's present attempt to escape that authority, in fact to void the broad duty imposed by NEPA on the Commision's licensing activities, is wholly without basis.

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[7] 42 U.S.C. §4321, et. seq.

NEPA mandates that the Commission consider "to the fullest extent possible", 42 U.S.C. §4332, any significant environmental impact of a major Federal action. Contrary to Petitioner's understanding, NEPA did have the effect of amending all other agency statutes. It required all agencies to propose "such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes and procedures set forth in this act"[8]. 42 U.S.C. §4333 (emphasis supplied). The statute itself states that "[t]he policies and goals set forth in this chapter are supplementary to those set forth in existing authorities of Federal agencies". 42 U.S.C. §4335. This means that the agencies, once granted jurisdiction, must go beyond the express obligations of their organic statutes to consider environmental costs and, when appropriate, to mitigate them[9].

To hold that such "supplementary authority" acts to repeal certain provisions of the Atomic Energy Act, as Petitioner suggests (Pet. Brief, p. 16), is simply incorrect[10]. Although

[8]This included the extensive EIS process required in 42 U.S.C. §4332(2)(c). Nearly seventy agencies and departments of the Federal government have implemented NEPA regulations, among those the respondent, NRC. See, Council on Environmental Quality, Fifth Annual Report, 382-85, Table 1 (1974).

[9]The various challenges raised in the instant Petition to NRC's supplemental authority under NEPA are reminiscent of those often asserted by the Commission itself (then the AEC) in the years preceding NEPA, arguments which have since been repudiated in countless decisions since Calvert Cliffs Coordinating Comm. v. AEC 449 F.2d 1109 (D.C. Cir., 1971). There can no longer be any serious question but that NEPA has expanded the decisional criteria and responsibilities of the Commission in granting and conditioning construction permits and operating licenses from merely insuring radiological safety, New Hampshire v. AEC, supra., to preventing environmental degradation associated with nuclear facilities. Vermont Yankee, supra., at 539.

[10]The legislative history shows that absent a "clear violation of their existing statutory authorization" (1969 U.S. Code Cong. & Adm. News, 2771) "all agencies of the Federal Government shall comply with the directives set out [by NEPA] . . . and that no agency shall utilize an excessively narrow construction of its existing statutory authorizations to avoid compliance." 115 Cong. Rec. 39703 (1969) (House Conferees).

NEPA may not "repeal by implication any other statute", U.S. v. SCRAP, 412, U.S. 669, 694 (1974), this Court along with the lower Federal courts, has found only the most narrow of circumstances in which NEPA may be said to effectively void another statute, making it explicit that the "repeal" language is not to be used lightly[11].

The fact that a particular condition has been imposed primarily or even solely on the basis of an environmental consideration, as a result of a finding made pursuant to the required environmental impact evaluation process, is of no significance here. As the First Circuit reasoned below, once NEPA has been activated by a major Federal action of environmental significance here nuclear licensing, "the Commission is under a dual obligation: to pursue the objectives of the Atomic Energy Act and those of the National Environmental Policy Act". The objectives of these two statutes are to be considered of equal substance and effect[12].

Finally, Petitioner concedes that the Commission has the authority to assess the environmental impact of transmission lines, and in so doing, virtually concedes its case (Pet. Brief,

[11]The requirements of NEPA have been suspended in three very limited circumstances: 1) in cases of emergency legislation (See, Milo Community Hosp. v. Weinberger, 525 F.2d 144 (1st Cir., 1975); Atlanta Gas Light Co. v. FPC, 476 F.2d 142 (5th Cir., 1973); 2) in cases where the conflicting legislation contains an environmental assessment substantially similar to NEPA's (See, Portland Cement Ass'n v. Ruckelshaus, 486 F.2d 375 (D.C. Cir., 1973) (Clean Air Act); Environmental Defense Fund v. EPA, 489 F.2d 1247 (D.C. Cir., 1973) and 3) as in the case relied on by Petitioner, where a statutory time limitation on agency action precludes a comprehensive environmental assessment (Flint Ridge Dev. Co. v. Scenic Rivers Assoc., 426 U.S. 776 (1976)). See, also, Urban Law Journal, Vol. 13:217 (1977). The facts of this case do not fit into any of these circumstances; e.g., the NRC operates under no statutory time constraints for issuing construction permits.

[12]"The two statutes and the regulations promulgated under each must be viewed in para [sic] materia". Citizens for Safe Power v. NRC, 524 F.2d 1291, 1292 (D.C. Cir., 1975).

p. 5). As the First Circuit noted in citing with approval the landmark decision in Calvert Cliffs, supra., "Clearly, it is pointless to consider environmental costs without seriously considering action to avoid them". (Pet. App., p. 16). Petitioner's scheme would have the Commission go through the time and expense of preparing a comprehensive impact statement, yet confine the Staff to one use of that analysis — to weigh the cost of the transmission line in the overall cost/benefit ratio of the plant as a whole. Conceivably, such an interpretation of the Commission's options for remedial action under NEPA, which PSCO apparently prefers, would preclude the NRC from doing anything less than prohibiting the construction of an entire plant[13]. In comparison, here the Commission examined several options much less costly to the utility and arrived at a one mile deviation from PSCO's preferred route[14].

C. NEPA ACTUALLY MANDATES THE COMMISSION'S DECISION.

The decision by the NRC to route Petitioner's transmission lines around the Natural Area is not only in conformance with NEPA, but it is the best result under NEPA's mandate to consider alternatives in hopes of mitigating environmental damage. The "Staff minimum circumference dogleg" chosen

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[13]Petitioner is well aware it is unlikely that any license for a nuclear plant would ever be denied, regardless of the environmental costs of the transmission lines. Thus, in fact, its reading would reduce any "assessment" of the line to empty paper shuffling.

[14]Petitioner's argument that the failure of Congress to give NRC the power of eminent domain indicates an intention to "keep the Commission out of the transmission routing business" (Pet. Brief, p. 12), is equally absurd. PSCO might as well argue that the Commission has no authority to consider siting alternatives of the plant itself, since it lacks eminent domain power here as well, a conclusion which virtually strips the agency of any meaningful licensing authority and leaves both the populace and the environment unprotected from the undisputed hazards of nuclear power.

by NRC represents a carefully analyzed compromise position between the alternatives suggested to the Licensing Board by Petitioner and those suggested by Forests. It reflects the comprehensive review of all information NRC received on environmental impacts and is the responsible decision required by NEPA. 42 U.S.C. §4332 (2) (c), 42 U.S.C. §4331(b). NRC's in-depth review of Petitioner's proposal was the normal procedure for power plant construction permit applications[15].

In evaluating a proposed project and its component parts, great emphasis should be placed by the agency on developing environmentally sound alternatives: "A rigorous explanation and objective evaluation of the environmental impacts of all reasonable alternative actions, particularly those that might enhance environmental quality or avoid some or all of the adverse environmental effects is essential". 42 C.F.R. §1500.8(a) (4) (1977); 42 U.S.C. §4332; Kleppe v. Sierra Club, supra. As the guidelines indicate, conservation and preservation of natural areas are important elements in the development of alternatives. See, e.g., NRDC v. Grant, 341 F.Supp. 356 (E.D.N.C., 1972).

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[15]Although Petitioner seeks to make a substantive distinction between Federal licensing and Federally constructed projects for purposes of excluding its own project from complete NEPA review (Pet. Brief, p. 16), there is no question that NEPA applies to agency licensing proceedings as well as to Federal projects and that the same intensity of environmental review is required in both cases. Federal permitting authority — and specifically the granting of a construction permit for a nuclear power plant — has always been considered a "major Federal action" requiring preparation of a complete impact statement. 42 U.S.C. §4332(2) (c); NRDC v. NRC, 539 F.2d 824, 844 (2d Cir., 1976) and cases cited therein; CEQ Guidelines, 42 C.F.R. §1500.5(a) (2). The cases relied on by Petitioner to create this distinction serve only to substantiate Intervenor's argument. Justice Marshall's concurring opinion in Kleppe v. Sierra Club, e.g., (427 U.S. 390, 419 (1975)) merely makes the point that environmental assessment of a licensing proceeding involves a smaller time frame than a Federal project. The scope of review remains unchanged.

Implicit in the requirement of evaluating alternatives is the power to mitigate the damages which the alternatives address. See, Sierra Club v. Froehlke, 359 F.Supp. 1289, 1340 (S.D. Tex., 1973). In addition, NEPA requires that environmental considerations influence decision-making. 42 U.S.C. §4331(a), 42 U.S.C. §4332 (A) (2) (B). Although NEPA does not require an agency to take any action pursuant to an EIS, NRDC v. SEC, 432 F.Supp. 1190 (D.C.D.C., 1977), it is clearly designed to constructively affect agency decision-making and thereby necessarily permits action to be taken, as was done here.

Through the power to condition permits, the NRC has the tools necessary to implement the recommendations of an EIS. To adopt the construction of NEPA presented by Petitioner would rob the statute of any effect whatsoever. Limiting NEPA's applicability to government-owned facilities would make environmental considerations relevant to only relatively few construction projects, and few, if any, nuclear power reactors. Limiting the agency's review to those alternatives suggested by an applicant would make public participation as mandated by the Administrative Procedure Act (U.S.C. §534(c)) and practiced by Forests a mere formality. Depriving an agency of the power to effectuate its environmental decisions would make the entire EIS procedure a useless exercise.

III. The First Circuit Decision Produces An Environmentally Sound Result Consistent With This Court's Policy Of Deference To NRC Decision-Making As Stated In Its Recent Vermont Yankee Decision.

As a result of NRC's routing decision, a pristine and unique swamp area will continue to be preserved in its natural state for conservation and recreation purposes. The "Staff minimum circumference dogleg" itself presents only minimal

environmental damage. By using existing transmission line corridors for a substantial portion of its length (Pet. App., p. 23), both the environmental and visual impacts of the transmission lines are lessened. NRC has fulfilled its statutory duty to protect our environment by suggesting this routing. Rather than creating a Federal & State conflict, the NRC has implemented a route supported by numerous groups, such as the Kingston Conservation Commission, the people best qualified to decide local land use issues.

This Court's most recent ruling on nuclear power plants and the NRC's licensing procedures upheld an agency's broad discretion in fulfilling its duties under NEPA. Vermont Yankee, supra. In the past the Commission has not graciously accepted the duty of accommodating environmental effects in its actions. Calvert Cliffs, supra.; Union of Concerned Scientists v. AEC, 499 F.2nd 1069 (D.C. Cir., 1974), cert. den. 407 U.S. 926. In the present case, upon prodding by Intervenor Forests and others, the NRC ultimately did consider environmental factors in issuing its construction permit. Where, as here, an agency has authority to reach its decision and where there have been no procedural infirmities throughout the licensing proceedings, judicial review is unwarranted. Vermont Yankee, 435 U.S., at 536-37:

> Administrative decisions should be set aside in this context, as in every other, only for substantial procedural or substantive reasons as mandated by statute . . . not simply because the court is unhappy with the result reached. And a single alleged oversight on a peripheral issue, urged by parties who never fully cooperated or indeed raised the issue below, must not be made the basis for overturning a decision properly made after an otherwise exhaustive proceeding.

Nearly every aspect of Seabrook has been challenged at the agency level or litigated in the courts, and even now Seabrook remains controversial. There is nothing in the Petition to warrant extending this litigation before this Court. The decision below presents no conflict among the circuits and no issue of major importance. Indeed, the decision is in complete harmony with this Court's most recent decision on administrative law, Vermont Yankee, and gives the deference urged therein to the agency's disposition of an issue properly within its jurisdiction.

Respectfully submitted,

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